

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH G. WILKINSON, and KELLY  
G. WILKINSON,

No. 2:24-cv-1416 TLN AC PS

Plaintiffs,

v.  
PHH MORTGAGE CORPORATION and  
WESTERN PROGRESSIVE LLC.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiffs are proceeding in this matter pro se, and pre-trial proceedings are accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). This case was commenced on May 17, 2024, and the operative First Amended Complaint was filed on June 6, 2024. ECF Nos. 1, 17.<sup>1</sup> On December 3, 2024, defendants moved to dismiss this case. ECF No. 22. The motion was taken under submission. ECF No. 26. Plaintiffs filed an opposition to the motion, ECF No. 27, and defendants replied, ECF No. 28. For the reasons set forth below, the undersigned recommends defendant's motion to dismiss (ECF No. 22) be GRANTED and that this case be DISMISSED without leave to amend.

<sup>1</sup> Plaintiffs filed a Second Amended Complaint on September 27, 2024 (ECF No. 17) but this filing was rejected as procedurally defective by District Judge Troy L. Nunley. ECF No. 19 at 4. Accordingly, the First Amended Complaint remains the operative complaint in this case.

## I. Background

#### A. The Operative First Amended Complaint

3 Non-party Lei Anne Wilkinson originally owned the property located at 3961 Nugget  
4 Lane, Placerville, California 95667 (the “Subject Property”). On December 9, 1999, Lei Anne  
5 Wilkinson took out a \$136,000.00 mortgage with BYL Bank Group which was secured by the  
6 Subject Property (the “Subject Loan”). Id. at 192. A deed, dated May 4, 2004, shows the Subject  
7 Property was held in joint tenancy by Lei Anne Wilkinson and Kenneth G. Wilkinson as two  
8 unmarried people. Id. at 86. Plaintiffs allege Lei Anne and Kenneth Wilkinson’s son, Kelly  
9 Wilkinson, lived at the Subject Property. Id. at 84.

10 On May 1, 2019, PHH Mortgage Corporation acquired the Subject Loan. Id. at 186. In  
11 2020, a loan modification was completed and the new principal balance on the Subject Loan was  
12 \$231,022.27. Id. at 188. On March 6, 2020, Lei Anne Wilkinson died without a will and  
13 plaintiffs allege the Subject Property passed to them. Id. at 84. On June 1, 2021, the Subject  
14 Loan went into delinquency. Id. at 247. Plaintiffs allege they began corresponding with  
15 defendants in January 2024 about repayment of the outstanding balance on the Subject Loan. Id.  
16 at 7. Specifically, plaintiffs allege they sent defendant “multiple conditional acceptances” to  
17 repay the Subject Loan, provided defendants send plaintiffs “original documentation and  
18 evidence of consideration.” Id. Plaintiffs further allege they did not begin repayment of the  
19 Subject Loan because defendants never provided the requested documentation. Id. Plaintiffs now  
20 sue each defendant for breach of contract and for breach of the duty of good faith and fair dealing.  
21 ECF No. 10 at 8-16.

## B. Motion to Dismiss

23 Defendants move to dismiss the case in its entirety on the grounds that (1) plaintiffs lack  
24 standing to challenge the loan at issue because they are not the borrowers, and (2) the FAC fails  
25 to state a claim upon which relief can be granted. ECF No. 22 at 2.

### C. Judicial Notice

27 Defendants ask the court take judicial notice of the following documents which are  
28 submitted in support of their motion, submitted as exhibits: (1) Deed of Trust recorded December

1 15, 1999, in the El Dorado County Recorder's Office as Document No. 99-0076286-00; (2)  
2 Notice of Default and Election to Sell Under Deed of Trust recorded April 12, 2000, in  
3 the El Dorado County Recorder's Office, as Document No. 2000-0018198-00; (3) Notice of  
4 Trustee's Sale ("NOTS") recorded July 18, 2000, in the El Dorado County Recorder's Office, as  
5 Document No. 2000-0035484-00; (4) Notice of Default and Election to Sell Under Deed of Trust  
6 recorded January 9, 2001, in the El Dorado County Recorder's Office, as Document No. 2001-  
7 0001507-00; (5) Notice of Default and Election to Sell Under Deed of Trust recorded August 20,  
8 2001, in the El Dorado County Recorder's Office, as Document No. 2001-0052654-00; (6) Notice  
9 of Trustee's Sale recorded November 27, 2001, in the El Dorado County Recorder's Office, as  
10 Document No. 2001-0076657-00; (7) Notice of Default and Election to Sell Under Deed of Trust  
11 recorded September 3, 2002, in the El Dorado County Recorder's Office, as Document No. 2002-  
12 0065097-00; (8) Notice of Default and Election to Sell Under Deed of Trust recorded November  
13 27, 2006, in the El Dorado County Recorder's Office, as Document No. 2006-0080462-00, (9)  
14 Notice of Default and Election to Sell Under Deed of Trust recorded July 19, 2007, in the El  
15 Dorado County Recorder's Office, as Document No. 2006-0080462-00; (10) Notice of Default  
16 and Election to Sell Under Deed of Trust recorded December 21, 2007, in the El Dorado County  
17 Recorder's Office, as Document No. 2007-0078402-00, (11) Notice of Default and Election to  
18 Sell Under Deed of Trust recorded June 18, 2008, in the El Dorado County Recorder's Office, as  
19 Document No. 2008-0029874-00.

20 The court takes judicial notice of the above referenced documents because they are public  
21 records. "A court shall take judicial notice if requested by a party and supplied with the  
22 necessary information." Fed. R. Evid. 201(d). "A judicially noticed fact must be one not subject  
23 to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of  
24 the trial court or (2) capable of accurate and ready determination by resort to sources whose  
25 accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The existence and contents of  
26 these publicly recorded documents can be accurately and readily determined, and judicial notice  
27 is appropriate.

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## II. Analysis

#### A. Legal Standards Governing Motions to Dismiss

3        “The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
4        sufficiency of the complaint.” N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 581 (9th Cir.  
5        1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
6        sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901  
7        F.2d 696, 699 (9th Cir. 1990). To survive dismissal for failure to state a claim, a complaint must  
8        contain more than a “formulaic recitation of the elements of a cause of action;” it must contain  
9        factual allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic  
10        Corp. v. Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a  
11        statement of facts that “merely creates a suspicion” that the pleader might have a legally  
12        cognizable right of action. Id. (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure  
13        § 1216, pp. 235-35 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter,  
14        accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556  
15        U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when  
16        the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
17        defendant is liable for the misconduct alleged.” Id.

18        In reviewing a complaint under this standard, the court “must accept as true all of the  
19        factual allegations contained in the complaint,” construe those allegations in the light most  
20        favorable to the plaintiff and resolve all doubts in the plaintiff’s favor. See Erickson v. Pardus,  
21        551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954,  
22        960 (9th Cir. 2010); Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010). However, the court need  
23        not accept as true legal conclusions cast in the form of factual allegations, or allegations that  
24        contradict matters properly subject to judicial notice. See Western Mining Council v. Watt, 643  
25        F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as  
26        amended, 275 F.3d 1187 (2001).

27 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
28 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may

1 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support  
2 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir.  
3 2014). The court's liberal interpretation of a pro se complaint, however, may not supply essential  
4 elements of the claim that were not pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d  
5 266, 268 (9th Cir. 1982); see also Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992). A pro se  
6 litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend,  
7 unless the complaint's deficiencies could not be cured by amendment. See Noll v. Carlson, 809  
8 F.2d 1446, 1448 (9th Cir. 1987).

9                   B. Standing

10                 A plaintiff's standing to sue is necessary to federal court jurisdiction; absent standing,  
11 there is no case or controversy under Article III of the Constitution and a federal court cannot  
12 hear the case. United States v. Hays, 515 U.S. 737, 742 (1995). To have standing, a plaintiff  
13 must plead and prove that he has suffered sufficient injury to satisfy the "case or controversy"  
14 requirement of Article III of the United States Constitution. See Valley Forge Christian College  
15 v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982); Clapper  
16 v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013). The case or controversy requirement ensures  
17 that federal courts do not decide questions that cannot affect the rights of litigants in the case  
18 before them or give opinions advising what the law would be upon a hypothetical state of facts.  
19 Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). Accordingly, the standing doctrine  
20 "requires federal courts to satisfy themselves that the plaintiff has alleged such a personal stake in  
21 the outcome of the controversy as to warrant his invocation of federal-court jurisdiction," so that  
22 "there is a real need to exercise the power of judicial review in order to protect the interests of the  
23 complaining party." Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009) (emphasis in  
24 original) (internal quotation marks and citations omitted).

25                 For standing to exist, plaintiffs must show (1) injury-in-fact that is concrete and  
26 particularized, as well as actual or imminent; (2) that the injury is fairly traceable to the  
27 challenged action of the defendant; and (3) that the injury is redressable by a favorable ruling.  
28 Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010) (citation omitted); Lujan v.

1      Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). “The party invoking federal jurisdiction  
 2      bears the burden of establishing these elements ... with the manner and degree of evidence  
 3      required at the successive stages of the litigation.” Lujan, 504 U.S. at 561 (citations omitted).  
 4      While threatened future harm can in some instances confer standing, the injury must be “certainly  
 5      impending” to constitute injury-in-fact; allegations of possible future injury are not sufficient.  
 6      Whitmore v. Arkansas, 495 U.S. 149, 158 (1990); see also Clapper, 568 U.S. at 409 (“[A]n injury  
 7      must be concrete, particularized, and actual or imminent.”) (citation and internal quotation marks  
 8      omitted). Accordingly, speculative injury is insufficient. Lujan, 504 U.S. at 565 n.2 (“Although  
 9      imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose,  
 10     which is to ensure that the alleged injury is not too speculative for Article III purposes—that the  
 11     injury is certainly impending.”) (internal quotation marks omitted).

12        Here, plaintiffs assert four causes of action, each based in contract and each related to the  
 13      enforcement of a mortgage loan and related foreclosure proceedings. ECF No. 17. However,  
 14      plaintiffs were admittedly not parties to the loan (see First Amended Complaint, ECF No. 10 at ¶¶  
 15     43-44, noting that Lei Anne Wilkinson is the borrower on the mortgage at issue) and fail to allege  
 16      facts that would allow them to assert claims belonging to the borrower. In general, a non-party  
 17      “to a contract does not have standing either to seek its enforcement or to bring tort claims based  
 18      on the contractual relationship.” Ambers v. Wells Fargo Bank, N.A., 2014 WL 883752, 2014  
 19      U.S. Dist. LEXIS 28291, at \*13 (N.D. Cal. Mar. 3, 2014) (citing Mega Life & Health Ins. Co. v.  
 20      Super. Ct., 172 Cal. App. 4th 1522, 1528-32 (Cal. Ct. App. 2009)).

21        Accordingly, courts regularly dismiss wrongful foreclosure-based claims, like plaintiffs’  
 22      here, that are brought by persons who were not parties to the mortgage loan at issue. See, e.g.,  
 23      Green v. Cent. Mortg. Co., 2015 WL 5157479, 2015 U.S. Dist. LEXIS 117241, \*15-16 (N.D. Cal  
 24      September 2, 2015) (dismissing negligent misrepresentation, fraud, wrongful foreclosure, unfair  
 25      business practices, cancellation of instruments and declaratory relief causes of action for lack of  
 26      standing); Cabrera v. Countrywide Fin., 2012 WL 5372116, 2012 U.S. Dist. LEXIS 156310, at  
 27      \*21-22 (N.D. Cal. Oct. 30, 2012) (even though the plaintiff had community property rights in her  
 28      home, the plaintiff lacked standing to bring civil RICO, ECOA, and UCL claims because she was

1 not a signatory to the loan); Brockington v. J.P. Morgan Chase Bank, N.A., 2009 WL 1916690,  
 2 2009 U.S. Dist. LEXIS 56622, at \*9 (N.D. Cal. July 1, 2009) (non-party to a loan “has no  
 3 standing to challenge defendant’s conduct in connection with extending the mortgage loan”);  
 4 Cleveland v. Deutsche Bank Nat’l Trust Co., 2009 WL 250017, 2009 U.S. Dist. LEXIS 7165,  
 5 2009 WL 250017 at \*2 (S.D. Cal. Feb. 2, 2009) (because the plaintiff’s wife, and not the plaintiff,  
 6 was the “borrower” on the loan, plaintiff did not have standing to assert claims for violation of  
 7 TILA, injunctive relief, statutory damages, fraud, accounting, cancellation of instruments, quiet  
 8 title, and declaratory relief based on the defendants’ foreclosure on property securing that loan).

9 At most, plaintiff Kenneth is a surviving joint tenant with respect to the subject property.  
 10 ECF No. 10 at 8. However, a successor in interest on title to real property does not automatically  
 11 transmute that party into the borrower on a mortgage. See Layton v. Ocwen Loan Serv., LLC,  
 12 2015 U.S. Dist. LEXIS 97097, at \*4 (C.D. Cal. July 23, 2015); Anolik v. Bank of Am. Loans,  
 13 2011 U.S. Dist. LEXIS 43190, 2011 WL 1549291, at \*1, \*3 (E.D. Cal. Apr. 21, 2011); Gonzalez  
 14 on Behalf of Estate of Perez, v. JP Morgan Chase Bank, N.A., 2014 U.S. Dist. LEXIS 152674,  
 15 2014 WL 5462550, at \*3 (N.D. Cal. Oct. 28, 2014) (“The execution of the quitclaim deed by Ms.  
 16 Perez in favor of Ms. Gonzalez and Ms. Gonzalez’s daughter does not confer standing as to  
 17 allegations concerning loan origination. Ms. Gonzalez has not shown that she had any obligation  
 18 on the loan. Therefore, she has failed to show a cognizable injury flowing from the loan  
 19 origination.”).

20 In this case, neither of the plaintiffs assumed the loan and became the borrower, and it is  
 21 apparent that they have no standing to pursue their claims against defendants. Plaintiffs were not  
 22 parties to the mortgage loan and therefore cannot bring contract claims regarding the mortgage  
 23 loan.<sup>2</sup> Accordingly, this case must be dismissed because the plaintiffs lack standing. Dismissal  
 24 should be without further leave to amend because the facts presently before the court make clear

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25 <sup>2</sup> It is clear that plaintiffs bring this case on behalf of themselves, and not on behalf of the  
 26 decedent’s estate. The court notes that even if plaintiffs were attempting to bring this case on  
 27 behalf of the estate, dismissal would be necessary because they have not alleged facts  
 28 demonstrating that they have any sort of legal authority to do so, such as facts demonstrating that  
 one of them “was legally appointed in probate as the executor, trustee, or administrator” of the  
 estate. Gonzalez v. JP Morgan Chase Bank, N.A., supra, 2014 U.S. Dist. LEXIS 152674, \*7-8.

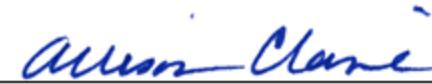
1 that the lack of standing cannot be cured by amendment. Because standing is a threshold  
2 jurisdictional matter, other grounds for dismissal are not addressed.

3 **III. Conclusion**

4 Accordingly, the undersigned recommends that the motion to dismiss (ECF No. 22) be  
5 GRANTED and that this case be DISMISSED.

6 These findings and recommendations are submitted to the United States District Judge  
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
8 after being served with these findings and recommendations, any party may file written  
9 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a  
10 document should be captioned “Objections to Magistrate Judge’s Findings and  
11 Recommendations.” Failure to file objections within the specified time may waive the right to  
12 appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez  
13 v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

14 DATED: February 19, 2025

15   
16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE

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